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National Association of Regulatory Utility Commissioners

November 16, 2001

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie Roman Salas
Secretary
Federal Communications Commission
455 12th Street, SW Portals II Building
Washington, DC 20544

**RE: *In the Matter of Implementation of the Telecommunications Act of 1996;
Telecommunications Carriers' Use of Customer Proprietary Network Information and
Other Customer Information; (CC Docket No. 96-115) Implementation of the Non-
Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934,
As Amended (CC Docket No. 96-149).***

Ms. Salas,

The National Association of Regulatory Utility Commissioners (NARUC) files these brief reply comments in the above-captioned proceeding. As referenced in our initial comments, this proceeding was the topic of an extensive discussion at NARUC's 113th Annual Convention held last week in Philadelphia, Pennsylvania.

As a result of that discussion, NARUC passed without opposition, a resolution pointing out the following:

- Even if the 10th Circuit's erroneous 1st amendment standard of review is applied to implement an opt-in approach to carriers' use of CPNI, the FCC need only demonstrate that (1) privacy is a substantial governmental interest underlying the adoption of 47 U.S.C § 222; and (2) there is ample evidence to demonstrate and an opt-out approach is insufficient to protect this interest;
- NARUC's State commissions have found in a variety of contexts a substantial interest in the care and treatment of customer derived information;
- The clear focus of § 222, which imposes the CPNI requirements, is Congress' interest in privacy;
- American jurisprudence recognizes a fundamental right to privacy in personal communications, and the Courts and Congress have recognized that paramount interest citizens have in protecting their privacy;
- There is independent evidence verifying that an opt-in approach is an ineffective method to protect sensitive private information; *and*

The resolution resolves that NARUC's members, "based on its members wide experience dealing with these types of privacy issues in a variety of contexts, finds that government has a clear and substantial interest in these issues."

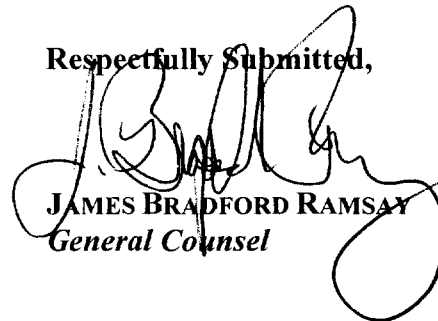
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As suggested by the November resolution, NARUC generally supports the initial comments filed by the Electronic Privacy Information Center, American Civil Liberties Union, American Library Association, Center For Digital Democracy, Center For Media Education, Computer Professionals For Social Responsibility, Consumer Action, Consumer Federation Of America, Junkbusters, Media Access Project, National Consumers League, Netaction, Privacyactivism, Privacy Journal, Privacy Rights Clearinghouse, Privacy Times, Public Citizen Litigation Group, And US PIRG.

The resolution, which is attached to these comments, also encourages NARUC's member commissions to file comments detailing their experiences and record based finding with respect to regulated utilities' use of customer information. NARUC is hoping to facilitate additional ex partes outlining relevant State experiences to supplement the record in this proceeding.

Respectfully Submitted,



JAMES BRADFORD RAMSAY
General Counsel

Resolution on Customer Proprietary Network Information (CPNI)

WHEREAS, On October 2, 2001, the FCC on remand from the 10th Circuit Court of Appeals released a notice seeking comment on what methods of customer consent would service the governmental interests at issue and afford informed consent in accordance with the first amendment; *and*

WHEREAS, NARUC contends that the FCC's original CPNI Order was narrowly tailored and that the existing administrative record convincingly demonstrates that, of the limited options available to the FCC, the opt-in method of obtaining customer approval was the most reasonable solution; *and*

WHEREAS, NARUC, in its amicus brief of the United States Supreme Court seeking review of the 10th Circuit's decision, also contends that the Court did not apply the correct standard of review when examining the FCC decision; *and*

WHEREAS, Even if the 10th Circuit's erroneous 1st amendment standard of review is applied to implement an opt-in approach to carriers' use of CPNI, the FCC need only demonstrate that (1) privacy is a substantial governmental interest underlying the adoption of 47 U.S.C § 222; and (2) there is ample evidence to demonstrate and an opt-out approach is insufficient to protect this interest; *and*

WHEREAS, NARUC's State commissions have found in a variety of contexts a substantial interest in the care and treatment of customer derived information; *and*

WHEREAS, The clear focus of § 222, which imposes the CPNI requirements, is Congress' interest in privacy; *and*

WHEREAS, American jurisprudence recognizes a fundamental right to privacy in personal communications, and the Courts and Congress have recognized that paramount interest citizens have in protecting their privacy; *and*

WHEREAS, There is independent evidence verifying that an opt-in approach is an ineffective method to protect sensitive private information; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2001 113th Annual Convention in Philadelphia, Pennsylvania, based on its members wide experience dealing with these types of privacy issues in a variety of contexts, finds that government has a clear and substantial interest in these issues; *and be it further*

RESOLVED, That NARUC encourages its member commissions to file comments detailing their experiences and record based finding with respect to regulated utilities' use of customer information.

Sponsored by the Committee on Consumer Affairs.

Recommended by the NARUC Board of Directors November 13, 2001.

Adopted in Convention November 14, 2001.